

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4631 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and  
MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MEETA CHEMICALS

Versus

UNION OF INDIA  
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Appearance:

MR MIHIR H JOSHI for Petitioner  
MR AKSHAY H MEHTA for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE J.N.BHATT and  
MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 14/12/1999

ORAL JUDGEMENT(J.N.Bhatt, J.)

Rule, service of which is waived by learned Central Government Standing Counsel Mr Akshay Mehta for the respondents. Upon joint request, the matter is taken up for final hearing today itself, considering the special facts obtainable in the present case.

The Commissioner (Appeals), respondent No.2 has recorded stay order No.383/1999 on 17.6.99, whereby, the petitioner has been directed to deposit an amount of Rs.1,90,000/- as pre-deposit under section 35F of the Central Excise and Salt Act 1944, rejecting the prayer of the petitioner for total waiver of the pre-deposit in view of the provisions of rule 57D and the object of Modvat scheme, which is directly under challenge before us in this petition. Therefore, the short question which requires our consideration and adjudication is whether the impugned direction is sustainable or not.

We have heard the learned advocates appearing for the parties and have considered the facts and circumstances of the case and the Modvat scheme and the Central Excise Rules. The main grievance voiced before us is that respondent No.2, Commissioner (Appeals) in the impugned order has considered the rule provisions of rule 57-A and 57-C and has not considered the provisions of rule 57D of the Rules. Upon the plain perusal of the impugned stay order, this contention appears to be justified. Even in the application, emphasis appears to be on the provisions of rule 57-D and the Commissioner (Appeals) does not seem to have considered the provisions of section 57D which prescribes circumstance under which credit of duty not to be denied or varied in certain circumstances. It is, really, very unfortunate that despite earlier order of remand by this Court, the point in focus could not be considered by the appellate authority, while passing the impugned stay order.

We are, therefore, left with one of the alternatives and it is to remand the matter again with a specific direction to the appellate authority concerned, respondent No.2 herein, to reconsider the application of the petitioner for waiver of pre-deposit under section 35F of the Central Excise Act, 1944 afresh in the light of the entire design and decideratum of Modvat scheme and also the relevant rule provisions of the Central Excise Rules in general and rule provisions of Rule 57D, in particular, within a short time-frame.

In the result, this petition is allowed. The impugned order is quashed and set aside and the respondent No.2 is directed to reconsider the stay petition, pending appeal, under section 35F in the light of the aforesaid directions as expeditiously as possible, but not later than 10th January, 2000. In the meantime, obviously, no coercive action shall be permissible qua the impugned order. Rule is made absolute accordingly leaving the parties to bear their own costs.

